



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This was the hearing of an application by the landlord for a monetary order. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Nanaimo. The tenancy began on May 12, 2012 on a month to month basis with rent in the amount of \$1,275.00 payable on the first day of each month. The tenants paid a security deposit of \$650.00 on May 7, 2012.

The tenants gave notice by voice mail and e-mail message on January 31, 2013 that they intended to move out of the rental unit at the end of February. They also said they were unable to pay the rent for February. The landlord posted a 10 day Notice to End Tenancy for unpaid rent to the door of the rental unit on February 3, 2013. The tenants' rent cheque for February was returned "NSF"

The tenants moved out of the rental unit on February 8, 2013. The landlord has claimed payment of rent for February and for March and she claimed \$650.00 as the cost of repairs and cleaning. The landlord testified that the tenants damaged the rental unit and left garbage and other items behind. She said that she had to dispose of a trampoline and a deep freeze left behind by the tenants. There was a door with a hole in it and what she described as dirt and debris. The landlord claimed the following for cleaning and repairs:

- 14 hours of cleaning, mudding, wall patching and painting at \$30 per hour = \$420

- Garbage and debris removal including trampoline and deep freeze and junk; 3 hours at \$30/hr= \$90
- Carpet cleaning: \$80
- Door repair 2 hours at \$30 per hour = \$60

Total: \$650.00

The tenant testified that they maintained and looked after the rental property and performed some improvements without compensation; the tenant said that they sanded and painted the deck without compensation and supplied their own materials. The tenant said they gave notice to the landlord on January 31, 2013 by e-mail and voice message. She said that the landlord refused to accept their notice and said they needed to fill out and sign a form giving notice and therefore they owed her rent for February and March. The landlord refused to accept rent for February only and then served an eviction notice. The tenants left the rental unit on February 8th. She said they left the rental unit in good condition. The tenant said that soon after February 8th they tried to pick up their freezer and valuable six month old trampoline, but the landlord had already disposed of them.

The landlord disputed the tenant's testimony concerning the condition of the rental unit at the end of the tenancy; she said the work to the deck was valueless and actually damaged the deck, but she did not submit any photographic or other documentary evidence to support her position.

Analysis and Conclusion

The tenants gave notice to end the tenancy by e-mail and by voice message. Section 52 of the *Residential Tenancy Act* requires that a Notice to End Tenancy must be given in writing and be signed and dated by the tenant. The e-mail and voice message did not satisfy the obligation to provide written notice as required by the Act.

Despite the tenants' failure to provide a notice that complied with section 52, the landlord received actual notice on January 31, 2013 that the tenants were leaving and the tenancy ended on February 8th when the tenants vacated the rental unit. Even though the tenants did not give the proper form of written notice, the landlord had an obligation to act to mitigate her damages by making reasonable efforts to re-rent the unit for March. The landlord did not provide any documentary evidence to show what steps she took to advertise the rental unit and secure a new tenancy. She did not provide a timeline for the completion of repairs to the rental property and I find that her estimates of the hours spent on cleaning and repairs were inflated and unsupported by

the evidence submitted. The tenants did cause some damage, most notably a hole in the basement door, but there is insufficient evidence to support an award in the amount claimed, an amount that coincidentally happens to correspond exactly to the amount of the security deposit held by the landlord. I find that the landlord should be awarded \$60.00 for the door repair, \$80.00 for carpet cleaning and an additional \$60.00 for other cleaning and disposal, for a total award for repairs and cleanup of \$200.00.

I find that the landlord is entitled to payment of rent for February in the amount of \$1,275.00 plus an NSF cheque charge of \$7.00. The landlord has not shown that she took reasonable steps to mitigate her damages by acting promptly to re-rent the property and I decline to award any amount for loss of revenue for March; the landlord had actual notice on January 31st that the tenants were moving and it has not been shown that the tenants' failure to provide a formal written notice was the cause of a loss of revenue for March. The amount awarded to the landlord is the sum of \$1,482.00. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,532.00. I order that the landlord retain the \$650.00 security deposit that she holds in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$882.00. This order may be filed in the Small Claims Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 24, 2013

Residential Tenancy Branch

